

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Midcontinent Communications)	
)	File No. EB-02-TS-416
Operator of Cable Systems in the States of:)	
)	
Minnesota, North Dakota and South Dakota)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: November 12, 2002**Released: November 26, 2002**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant Midcontinent Communications ("Midcontinent") temporary waivers of Section 11.11(a) of the Commission's Rules ("Rules") for 12 cable television systems in the above-captioned state. Specifically, we grant 12-month waivers of Section 11.11(a) for two cable systems listed in Attachment A and 36-month waivers of Section 11.11(a) for ten cable systems listed in Attachment A. Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.¹

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.² In 1994, the Commission adopted rules requiring cable systems to participate in EAS.³ In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.⁴ The

¹ 47 C.F.R. § 11.11(a).

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations" 47 U.S.C. § 544(g).

³ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994) ("First Report and Order"), reconsideration granted in part, denied in part, 10 FCC Rcd 11494 (1995).

⁴ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("Second Report and Order").

Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁵ However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.⁶ In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.⁷ The Commission indicated that waiver requests must contain at least the following information: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.⁸

3. On August 12, 2002, Midcontinent filed a request for temporary, 36-month waivers of Section 11.11(a) for 12 cable systems in the States of Minnesota, North Carolina and South Carolina. In support of its waiver request, Midcontinent states that these are small, rural cable systems serving between 28 and 1,240 subscribers. Based on price quotes provided by an EAS equipment manufacturer, Midcontinent estimates that it would cost approximately \$92,738 to interconnect and install EAS equipment at these systems. Midcontinent asserts that this cost will impose a substantial financial hardship on it and provides its 2001 financial statement in support of this assertion. In addition, Midcontinent submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. In this regard, Midcontinent notes that its subscribers currently have access to national EAS messages on at least one-sixth of all programmed channels. Midcontinent also asserts that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations.

4. Based upon our review of the financial data and other information submitted by Midcontinent, we conclude that temporary, 12-month waivers of Section 11.11(a) are warranted for the largest two cable systems in Attachment A and temporary, 36-month waivers of Section 11.11(a) are warranted for the smaller 10 cable systems in Attachment A.⁹ In particular, we find that the estimated \$92,738 cost of interconnection and EAS equipment for these small cable systems could impose a financial hardship on Midcontinent.

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

⁹ The 12-month waivers will extend from October 1, 2002, until October 1, 2003, and the 36-month waivers will extend from October 1, 2002, until October 1, 2005. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

5. We note that the Commission recently amended the EAS rules to permit cable systems serving fewer than 5,000 subscribers to install FCC-certified decoder-only units, rather than both encoders and decoders, if such a device becomes available.¹⁰ Based on comments from equipment manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.¹¹

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹² Midcontinent Communications **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2003 for two cable television systems in Attachment A and **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2005 for 10 cable television systems in Attachment A.

7. **IT IS FURTHER ORDERED** that Midcontinent Communications place a copy of this waiver in its system files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested counsel for Midcontinent Communications, J. Christopher Redding, Esq., Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Technical and Public Safety Division
Enforcement Bureau

¹⁰ *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket 01-66, FCC 02-64 at ¶ 71 (released February 26, 2002).

¹¹ One manufacturer estimated that an EAS decoder-only system can reduce the cost by 64% over what a cable operator would spend for an encoder/decoder unit. *Id.* at ¶ 70.

¹² 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.

Attachment ACable Systems:Temporary Waiver Granted Until:

Ortonville, Minnesota	October 1, 2003
Casselton, North Dakota	October 1, 2003
Cooperstown, North Dakota	October 1, 2005
Hankinson, North Dakota	October 1, 2005
Manvel, North Dakota	October 1, 2005
Mayville, North Dakota	October 1, 2005
Minto, North Dakota	October 1, 2005
Ashton, South Dakota	October 1, 2005
Colton, South Dakota	October 1, 2005
Humboldt, South Dakota	October 1, 2005
Milbank, South Dakota	October 1, 2005
Prairiwood Development/Aberdeen, South Dakota	October 1, 2005